

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG -2 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0238-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
STEPHEN JACKSON COTTRELL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR20070899

Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

Sheila Sullivan Polk, Yavapai County Attorney
By Sheila Sullivan Polk

Prescott
Attorneys for Respondent

Stephen J. Cottrell

Tucson
In Propria Persona

B R A M M E R, Judge.

¶1 Petitioner Stephen Cottrell seeks review of the trial court's order denying his of-right petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a

clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Cottrell has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Cottrell was convicted of theft and fraudulent schemes and artifices. On March 12, 2009, the trial court sentenced Cottrell to an aggravated ten-year term of imprisonment on the theft count and suspended the imposition of sentence on the fraudulent schemes and artifices count, placing Cottrell on a seven-year term of probation to begin upon his release from prison. Thereafter, on July 23, 2009, Cottrell filed a document entitled “status report on appeal from . . . May 13, 2009.” In that document he asked the court to “check status to see if court has received notice for post-conviction relief after May 13, 2009. A copy is enclosed with this request. It is unclear if the prison mailroom has sent the legal document.” Attached was a copy of a notice of post-conviction relief and a request for preparation of post-conviction relief record with a signature dated May 13, 2009.

¶3 The trial court noted that Cottrell’s notice had been notarized timely and determined “good cause” existed “to authorize a delayed filing of Notice of Post-Conviction Relief,” presumably pursuant to *State v. Rosario*, 195 Ariz. 264, 987 P.2d 226 (App. 1999), and appointed counsel. Counsel filed a notice stating he had reviewed the record and was “unable to find a meritorious issue of law or fact which may be raised as a basis for relief pursuant to Rule 32.” In his supplemental pro se brief, however, Cottrell asserted, without supporting argument, various errors and constitutional violations on a form “petition for post-conviction relief.” And, in an attached “affidavit,” he raised several claims of ineffective assistance of counsel, including that counsel had not

explained the plea agreement, had allowed him to be “unlawfully induced to a plea of guilty,” had “assured [him he] would get probation . . . and did not indicate possible prison time until the day of sentencing,” had not informed him of “county attorney’s claim on sentencing,” had given the county attorney “paperwork that was not used for purposes of alleged crime,” and had failed “to get evidence from [his] witnesses.”

¶4 The trial court summarily rejected Cottrell’s claims. In a consolidated ruling which addressed claims by Cottrell’s codefendants, it stated it “incorporate[d] Cottrell into [its] findings.” In so doing, the court specifically rejected any claim that Cottrell’s sentence was unlawful and any claim that he had not been advised of the possibility of a prison sentence, noting the range of available sentences had been discussed in detail with him by the court. In a supplemental ruling,¹ the court also separately addressed Cottrell’s arguments about the voluntariness of his plea, the lawfulness of his sentence, and his ineffective assistance of counsel claims.

¶5 On review, Cottrell first contends the trial court abused its discretion in denying his motion to extend the time to file a reply to the state’s response to his petition for post-conviction relief. But the court already had granted Cottrell one extension of time in which to file the reply, indicating in its order that it would not grant further extensions absent extenuating circumstances. *See* Ariz. R. Crim. P. 32.6(b) (“Extensions

¹This ruling was not included in our record on review, but both Cottrell and the state included it with their petitions. Because both parties have included the ruling, which is file stamped by the trial court and otherwise appears to have been filed properly, we review that ruling as well as the court’s consolidated ruling, which does appear in the record.

[of time to file reply] shall be granted only upon a showing of extraordinary circumstances.”). Cottrell provided no basis for his request in his motion, stating only that he wanted “an additional [forty-five] days to confer with counsel.” We therefore cannot say the court abused its discretion in denying Cottrell’s motion.²

¶6 Cottrell also maintains the trial court violated his due process rights by issuing “a one size fits all order” in which it “took what other defendants filed and entered the order.” But, as noted above, the court issued a supplemental decision in which it specifically addressed Cottrell’s claims separately from those of his codefendants. This claim therefore is without merit.

¶7 Additionally, Cottrell asserts there was an insufficient factual basis for his plea and “no determination of the actual victim’s losses” to support the court’s restitution order. These claims were not raised below, and we will not consider on review issues or arguments that have not been properly presented to or decided by the trial court. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c) (“party aggrieved may petition the appropriate appellate court for review of the actions of the trial court”).

¶8 In its rulings on Cottrell’s petition below, the trial court correctly identified and addressed the remainder of Cottrell’s claims in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272,

²Cottrell filed a second motion for an extension in which he stated he needed more time to meet with a new attorney because his previous attorney was “no longer representing” him, but that motion was received after the trial court had issued its ruling, and, in any event, we cannot say the court abused its discretion in determining this did not rise to the level of extraordinary circumstances.

274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by reiterating the court's rulings in their entirety, and we therefore adopt them. *See id.* Thus, although we grant the petition for review, we deny relief.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge